No. 13-civ 935 (JGK)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RICHARD SURABIAN, et al.,

Plaintiffs-Appellants,

-against

USDC SDNY DOCUMENT

ELECTRONICALLY FILED

DOC#

IRVING H. PICARD,

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

APPEAL

ADV. PRO. NO. 08-01789 (BRL)

SIPA LIQUIDATION

DENIED MOTION TO REMOVE IRVING H. PICARD DOC. 5080 DATED NOVEMBER 14, 2012 BURTON R. LIFLAND UNITED STATES BANKRUPTCY JUDGE

APPELLANTS RICHARD SURABIAN and STEVEN SURABIAN'S BRIEF

Richard Surabian P.O. Box 397 W. Hyannisport, MA 02672 (508) 579-9834 Steven Surabian 1230 Rt. 28 S. Yarmouth, MA 02664 (508) 688-4613

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STATEMENT OF ISSUE PRESENTED FOR REVIEW

- 1. DID THE BANKRUPTCY COURT ERROR IN THEIR **ORDER**, MOTION DENIED and DENIED WITH PREJUDICE?
- 2. DID THE BANKRUPTCY COURT ERROR IN THEIR **ORDER**, THAT THE BANKRUPTCY COURT SHALL RETAIN JURISDICTION WITH RESPECT TO ALL MATTERS RELATING TO THE INTERPRETATION OR IMPLEMENTATION OF THIS **ORDER**?
- 3. DID THE BANKRUPTCY COURT ERROR IN THEIR CONCLUSION, WHEREAS, THE SURABIANS HAVE NOT SHOWN CAUSE FOR IMPLEMENTING THE EXTREME REMEDY OF REMOVING THE TRUSTEE, AS THEY HAVE FAILED TO SET FORTH SPECIFIC FACTS IN SUPPORT THEREOF, EITHER IN THEIR PAPERS OR AT HEARING, AND HAVE MADE ONLY UNSUPPORTED, CONCLUSORY ALLEGATIONS OF PREJUDICE ON THE PART OF THE TRUSTEE, and WHEREAS, AT MOST, THE SURABIANS HAVE SHOWN THAT THEY DISAGREE WITH THE TRUSTEE'S TREATMENT OF THEIR CLAIMS, WHICH CLEARLY DOES NOT RISE TO THE LEVEL OF DEMONSTRATING CAUSE FOR REMOVAL OF THE TRUSTEE?
- 4. DID THE BANKRUPTCY COURT ERROR IN INCLUDING MARTIN M. SURABIAN WHEN MARTIN M. SURABIAN CLEARLY DID NOT FILE MOTION TO REMOVE THE TRUSTEE WHICH CLEARLY SHOWS THE BANKRUPTCY COURT DID NOT READ OR LISTEN CLEARLY TO THE MOTION AND ARGUMENTS PRESENTED IN THE SURABIANS PREVIOUSLY FILED PAPERS PERTAINING TO THE SURABIANS OBJECTIONS TO THE TRUSTEE'S SETTLEMENTS ETC. AND ORAL ARGUMENT?

STATEMENT OF THE CASE

On August 21 2012, Richard Surabian and Steven Surabian mailed their Motion to Remove Irving H. Picard as Trustee. Martin M. Surabian did not file a Motion to Remove the Trustee. Judge Lifland Denied the Motion with prejudice including Martin M. Surabian, preventing Martin M. Surabian from ever filing a

Motion to remove the Trustee with out ever giving Martin M. Surabian an opportunity or giving Richard Surabian and Steven Surabian the opportunity to Motion the Removal for future injustices regarding the Trustee's handling of the Maddoff bankruptcy. On November 28, 2012 Richard Surabian an Steven Surabian mailed their Notice of Appeal Jury Demand. Richard Surabian and Steven Surabian filed their Motion to remove the Trustee because the Trustee Denied the Surabians claims, claiming that the Surabians were not listed in the books and records of BLMIS without ever allowing the Surabians access to the Books and Records because the Surabians knew they were direct customers because the opened their accounts directly with Bernard Madoff himself back in the early 1990's. The Trustee allowed claims from those simply because they were in the Books and Records of a person who created the United States largest Ponzy scheme. Where now, even the Trustee claims he will not pay according to those same records because Madoff just invented those books, yet Irving H. Picard allowed as customers those he claimed were listed and Denied those he claimed were not listed in those same Books and Records while denying access to those same very books and Records. Irving H. Picard also made settlements without showing how and why he allowed other than saying it would be easier. He never showed how he determined the amount owed because it could have been much larger nor did he show the assets of those involves which would have shown if a larger settlement

could have been recovered with only a percentage of the extra amount recoverable as expense. The Trustee clearly did not have all the customers interests involved and for the public interest, the Trustee should have been Removed.

The Surabians did object to the Trustee's Denial of their eight claims and were to be given a hearing which never happened. The Bankruptcy Court never in the Order Denying the Surabians Motion to Remove the Trustee, ever indicated the Surabians had no status because the Surabians were not customers of BLMIS or for any other reason.

STATEMENT OF THE FACTS

Martin M. Surabian never filed a Motion to Remove Irving H. Picard as

Trustee, the Order Denying the Motion to Remove Irving H. Picard as the Trustee
with prejudice included Martin M. Surabian. Clearly showing the Court erred in its

Order and the Order must be Vacated.

The Surabians opened eight accounts directly with Bernard L. Madoff in the early 1990's. The Surabians timely filed their claims regarding the Madoff bankruptcy. The Trustee denied the Surabians eight claims stating that the Surabians were not listed in the Books and Records of BLMIS and only those listed would be determined by the Trustee to be customers.

Bernard L. Madoff had been conspiring and although the United States

Government determined he never bought any stocks or securities Bernard L.

Madoff had altered his books to reflect that he had.

The Trustee informed the Surabians that if they opposed the Trustee's determination that the Surabians were not customers that they could timely request a hearing. The Surabians did timely oppose the Trustee's Denial and have been waiting for their hearing.

The Surabians were treated as customers as they were served with some of the Trustee's filings with the Bankruptcy Court. The Surabians did object to several of the Trustee's settlements and filed their opposition with the Court. The Trustee even in his motion to distribute money to customers, never listed who the customers were or how much was being distributed to whom. The Surabian filed opposition and fearing that their money was being distributed to others and even to others that may not have been customers but who simply because the Trustee decided were going to be paid. Which forced the Surabians to Motion for the Removal of the Trustee. The Trustee never contacted the Surabians directly and has refused to supply the Surabians access to the very books and records the Trustee claims the Surabians are not listed in and refused to allow the Surabians access to Bernard L. Madoff claiming Madoff could not be credible, yet the Trustee accepted as credible books and records altered by Bernard L. Madoff over the years, although denying access to those very records which would show the Surabians

were customers and that some of the people the Trustee determined to be customers were not.

At the Motion hearing the Trustee was not present to oppose the Surabians and only supplied unsupported denials. The duty of a Trustee is to distribute fairly and without prejudice the collected assets to all those entitled not to pick and chose who the Trustee wants to pay and the Trustee is to collect as much of the assets as he can to distribute. The Trustee failed to state who was being paid and how much and did not show justifiable reason for determining who owed what and why a settlement of Billions of dollars less was being excepted which resulted in customers being paid substantially far less than they deserved.

SUMMARY OF THE ARGUMENT

Surabians have eight accounts that they opened directly with Bernard L. Madoff Since the early 1990's. After the public exposure of Madoff's sham of never purchasing any securities the Surabians filed their timely claim. The Trustee decided to Deny the Surabians Claims stating he did not find Surabians listed in the Books and Records, all 20 plus Million documents that no one could read. Now the Trustee even claims he can not trust what is in those books and records because Madoff plained everything from the beginning same as the Surabians claimed. The Trustee is Denying the Surabians access to the same books and records and even to testimony from Madoff himself regarding his knowledge of the Surabians

as well as he failed to furnish any details regarding how and why this money was owed and why he settled for a lot less which effected all customers not just the Surabians. The Trustee failed to protect the Surabians simply by saying he does not believe the Surabians yet he Allowed claims simply because Madoff listed his friends in the books and records the Trustee now says can not be taken as truthful.

The Trustee in his Motions to distribute the recovered assets did not list to whom and how much was being distributed to whom, the trustee's Motions are non informative and deny the Customers full knowledge as some customers may know that a person or group the Trustee is paying is in fact not a customer or did not invest that amount of monies, denying true customers their fair share.

The Trustee now says that if the Surabians are determined to be Customers he will pay them but if the Order stands as with prejudice the Trustee will not have to pay or do anything regarding the Surabians as they will not be able to motion for his Removal in the future.

ARGUMENT

- 1. DID THE BANKRUPTCY COURT ERROR IN THEIR IN THEIR ORDER, MOTION DENIED and DENIED WITH PREJUDICE? and
- 4. DID THE BANKRUPTCY COURT ERROR IN INCLUDING MARTIN M. SURABIAN WHEN MARTIN M. SURABIAN CLEARLY DID NOT FILE MOTION TO REMOVE THE TRUSTEE WHICH CLEARLY SHOWS THE BANKRUPTCY COURT DID NOT READ OR LISTEN CLEARLY TO THE MOTION AND ARGUMENTS PRESENTED IN THE SURABIANS PREVIOUSLY FILED PAPERS PERTAINING TO

THE SURABIANS OBJECTIONS TO THE TRUSTEE'S SETTLEMENTS ECT. AND ORAL ARGUMENT?

Richard Surabian and Steven Surabian as customers of BLMIS and without ever being served a motion to Expunge their Claims filed Motion to Remove the Trustee, Irving H. Picard because the Trustee was not protecting their claims and denied the Surabians Claims based on the Trustee's claim that the Surabians were not in the Books and Records of BLMIS yet denied the Surabians access to these very Books and Records. Martin M. Surabian did not file a Motion to Remove the Trustee and can not be denied the right to at a later date to file a Motion to Remove the Trustee. Martin M. Surabian filed Appeal Jury Demand from Judge Lifland's Order which Denied with prejudice the Removal of Irving H. Picard including Martin M. Surabian who never had the opportunity to file his argument for the removal of the Trustee. This clearly was a broad denial, same as if Judge Lifland included all customers or alleged customers of BLMIS from ever filing a Motion to Remove the Trustee no matter what the Trustee does or does not do.

The Order did not mention that the Surabians were not customers, so even though the Trustee would not pay the Surabians as he was paying other customers of BLMIS the Hearing Judge Denied with prejudice the Surabians Motion to Remove the Trustee because it was only the SURABIANS that were not being treated as customers. All other Non-customers were NOT CUSTOMERS and had

NO CLAIMS.

Surabians do not believe the Law allows for a Trustee to simply not pay whom he wishes not to pay in a Bankruptcy. If the Trustee can be Removed for not paying every customer or most customers, he should be able to be Removed for not paying one customer.

The Motion to Remove was not filed by Martin M. Surabian, see Motion.

3. DID THE BANKRUPTCY COURT ERROR IN THEIR CONCLUSION WHEREAS, THE SURABIANS HAVE NOT SHOWN GOOD CAUSE FOR IMPLEMENTING THE EXTREME REMEDY OF REMOVING THE TRUSTEE, AS THEY HAVE FAILED TO SET FORTH SPECIFIC FACTS IN SUPPORT THEREOF, EITHER IN THEIR PAPERS OR AT HEARING, AND HAVE MADE ONLY UNSUPPORTED, CONCLUSORY ALLEGATIONS OF PREJUDICE ON THE PART OF THE TRUSTEE, and WHEREAS, AT MOST, THE SURABIANS HAVE SHOWN THAT THEY DISAGREE WITH THE TRUSTEE'S TREATMENT OF THEIR CLAIMS, WHICH CLEARLY DOES NOT RISE TO THE LEVEL OF DEMONSTRATING CAUSE FOR REMOVAL OF THE TRUSTEE?

The Surabians have not failed to set forth specific facts in support of their Motion to Remove the Trustee. They have shown good cause for implementing the extreme remedy of Removing the Trustee.

The Surabians have shown that the Trustee does not pay customers and denies claims based on unsupported, conclusory allegation that the Surabians are not in the Books or Records of BLMIS and refuses to allow an examination of these very books and records. See Surabians Motions to subpoena books and records and Bernard L. Madoff and the Trustee's opposition.

It is a fact that the Trustee has not paid the Surabians and it is a fact that the Trustee allowed claims simply because Bernard L. Madoff listed them in his Books and Records as stated to by the Trustee and those accounts were paid or must be assumed to have been paid as the Trustee did not motion not to pay, this is a fact. The settlements are on file, the Trustee never showed how he determined money was owed or any background as to the parties involves regarding their net worth which should have been considered in determining a settlement. It is a fact the Trustee never mentioned enough information to make a knowledgeable and intelligent assessment of the settlement. See the Settlement Motions and Surabians Opposition.

CONCLUSION

WHEREFORE, this Court must overturn Judge Lifland's Order and Allow The Surabians Motion To Remove The Trustee or Allow a Jury Trial regarding the Removal of the Trustee, Irving H. Picard.

Steven Surabian Pro se

1230 Rt. 28

S. Yarmouth, MA 02664

(508) 688-4613

Date: September 19, 2013

Richard Surabian Pro se

P.O. Box 397

W. Hyannisport, MA 02672

(508) 579-9834

CERTIFICATE OF SERVICE

I certify that this 20th day of September, 2013 I served a true copy of the foregoing on Baker & Hostetler, LLP, counsel for the Trustee, Irving H. Picard, 45 Rockefeller Plaza, New York, NY 10111, Attn: David J. Sheehan.

Steven Surabian

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454 Craigville Beach Road

W. Hyannisport, MA 02672

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UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION)	
CORPORATION,		
)	Adv. Pro. No. 08-01789 (BRL)
Plaintiff-Applicant,)	
)	SIPA Liquidation
v.)	
)	(Substantively Consolidated)
BERNARD L. MADOFF INVESTMENT)	
SECURITIES LLC,		
)	
Defendant.		
In re:)	
)	
BERNARD L. MADOFF,)	
,)	
Debtor.	<u>.</u>)	

MOTION TO REMOVE IRVING H. PICARD AS TRUSTEE FOR THE SUBSTANTIVELY CONSOLIDATED SIPA LIQUIDATION OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC AND BERNARD L. MADOFF

We, Steven Surabian and Richard Surabian having accounts opened directly through Bernard L. Madoff with Bernard L. Madoff Investments Securities LLC ("BLMIS") and as claimants and customers having interest, Motion this Court for the Removal of Irving H. Picard as Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff for the following reasons:

- 1. On July 26, 2012 Irving H. Picard ("Trustee") as Trustee through his Attorneys, filed Notice of Motion for an Order Approving Second Allocation of Property to the Fund of Customer Property and Authorizing Second Interim Distribution to Customers.
- 2. Accompanying the Trustee's Motion was a 75 page document titled Miscellaneous,

customers of BLMIS that the Trustee was intending on distributing the funds to after Order Approving Second Allocation of Property to the Fund of Customer Property is Approved. See attached Exhibit "A".

- 3. On page 68 of 75 the name of Martin M. Surabian, Richard Surabian and Steven Surabian are listed as customers Distribution is intended for by the Trustee. See Exhibit "B".
- 4. The Trustee also attached additional 75 page document titled **File a Motion**, customers of BLMIS that the Trustee claimed the Trustee was intending on distributing the funds to after his Motion was Approved. See attached Exhibit "C".
- 5. Again on page 68 of 75 the names of Martin M. Surabian, Richard Surabian and Steven Surabian are listed as customers the Trustee intended on distributing assets to if the Motion Authorizing Second Interim Distribution To Customers is Approved. See attached Exhibit "D".
- 6. Martin M. Surabian, Richard Surabian and Steven Surabian ("Surabians") as customers of BLMIS, Filed Objection to the Second Interim Distribution to Customers on August 7, 2012.
- 7. On August 15, 2012 Securities Investor Protection Corporation, filed Memorandum of Law of the Securities Investor Protection Corporation in Support of Trustee's Motion for an Order Approving Second Allocation of Property to the Fund of Customer Property and Authorizing Second Interim Distribution to Customers.
- 8. Kevin Bell certified that true and correct copies of SIPC's Memorandum of Law in Support was mailed to those parties as set forth on attached Schedule A, BLMIS Customers, page 3. See attached Exhibit "E".
- 9. On page 5 of Kevin Bell's Certificate of Service was listed as customers of BLMIS were the names of Martin M. Surabian, Richard Surabian and Steven Surabian. See Exhibit "F".

- 10. Also attached to Kevin Bells certificate was a 75 page document titled **File an answer to a** motion, and on page 68 was listed the names of Martin M. Surabian, Richard Surabian and Steven Surabian. See Exhibit "G".
- 11. On August 15, 2012 the Trustee, Irving H. Picard filed Trustee's Reply to Objections to Trustee's Motion for an Order Approving Second Allocation of Property to the Fund of Customer Property and Authorizing Second Interim Distribution to Customers.
- 12. No. 4 of the Reply the Trustee indicates the Surabians filed the second objection.
- 13. Page 7 of the Trustee's Reply, II. The Surabian Objection No. 17, the Trustee states that even though the Surabians were listed as customers the Trustee intended on distributing Allocation to if Approved see Exhibits A through G, the Trustee now indicates that he will not distribute to the Surabians if the Second Allocation is Approved. See Exhibit "H".
- 14. The Trustee claims that this Court has recognized that the Surabians were never customers or creditors of BLMIS, they will not receive any of these funds and have no standing to object to the Motion. The Trustee never attached any Court documents indicating the Surabians at hearing were judged not to to be customers and have no standing to object to the Motion. The Court just Overruled the objections and never notified the Surabians that they were not customers.
- 15. Who else listed as Customers of BLMIS, that the Trustee indicated in his Motion of the Second Allocation to Customers does the Trustee now not intend to Distribute funds to? If no one else, then the Surabians claim that the Trustee is showing prejudice.
- 15. A Trustee can not deny a claim based on his personal prejudices and if so must be removed by this Court.
- 17. The Trustee has never meet with the Surabians and only indicated several months ago that he

does not believe the Surabians are customers of BLMIS based on the records of BLMIS.

18. BLMIS records can not be considered as accurate by this court, otherwise customers would own stock in companies that the Court now claims were never purchased by BLMIS, eventhough the records indicated to the customers that the stock was purchased for the customers.

19. The Surabians were never given accesses to the records of BLMIS to see were and how their assets were diverted and to whom.

20. The Surabians are True Israelites since the time of Jacob but are not and never would be Zionists and they now believe that Madoff being a Zionist and not liking the fact that not only were the Surabians not Zionists but were Anti-Zionists, plained on steeling their assets from the start.

21. Surabians now believe that if Madoff was never found out, that everyone would believe Madoff, that the Surabians never had accounts with BLMIS and he would get all their assets.

22. The Trustee is still willing to believe Madoff's records, not just regarding as he claims that Madoff's records do not indicate the Surabians as customers or at-least deny the Surabians, claiming that Madoff's records do not indicate that the Surabians were customers even if Madoff's records did but also that the Trustee is willing to pay customers as claimed on record even if they may be claiming what should be the Surabians accounts.

23. Martin M. Surabian would also be filing this Motion but has been hospitalized since August 11, 2012 over this Madoff scam and after hearing that the Trustee claims he was not a customer without out ever contacting him.

CONCLUSION

WHEREFORE, we, Steven Surabian and Richard Surabian as customers and creditors of

BLMIS pray this Court Allow their Motion to Remove Irving H. Picard as Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff or in the alternative Order the Trustee to Distribute to all Customers that he indicated he intended to distribute to if his Motion Authorizing Second Interim Distribution to Customers is Allowed including the Surabians.

Steven Surabian Pro se

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(508) 688-4613

Richard Surabian Pro se

P.O. Box 397

W. Hyannisport, MA 02672

(508) 579-9834

CERTIFICATE OF SERVICE

I certify that this 21st day of August, 2012 I served by 1st class US Mail a true copy of Motion To Remove Trustee to the Chambers of the Honorable Burton R. Lifland and (a) Baker & Hostetler LLP, counsel for the Trustee, 45 Rockefeller Plaza, NY, NY 10111, Attn: David J. Sheehan, and (b) the Securities Investor Protection Corporation, 805 Fifteenth Street, NW, Suite 800, Washington, DC 2005, Attn: Kevin H.Bell, Esq. postage pre-paid.

Steven Surabian

EXhIBIT

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EXHIBIT

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Dan Abraham nu behalt of Creditor Claudu Jaar. abrahamdo-duckstein/beptete.com. nybankupteydocketing/ordacksteinshapara.com

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Anna Corbon Aguitat on behalf of Unknown Karen Davis angurlarmennhungunfar.emm Nation D. Adler on behalf of Defendant 2620 Medici AG ndatoriggreem

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David Mt. Banker on behalf of Creditor Corperhone Capital, Inc.

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gaithan R. Barrus behalf of Trusce Iving ficad partoduke law cont

David L. Barrack on behalf of Defendant Frederic Peden Judrack (ortubriyht.Sum

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tjomac P. Hantstaft of behalf of Creding Egizleytest Channel Klank Lannest, Lady Jamor Soplar Wall Tibu, Fronth Earl at Joseph's Franky Titost, Kney Gormoss, Jamby Sefficheral, The FSW Sefficient Jamos Andrew Schilland Brown, Scholywork, Channel Brown, Carlos Sefficients, Carlos Seffic

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Richard I. Bernard on behaff of Unknown David Sheehan obernardfotoley.com

keftery L. Bernfeld un behalf of Gredstor John Maccabee & Shorry Move Maccabee Lavar!" Total Dated 1124/19 Jefterybernfeld/obernfeld-demotten.com

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Peter D. Hilawa on behalf of Defendant Fine &-S Trust philowalogous landaris com

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Mark A. Bhomton behalfol Unknown Alvin Jeharr mhlanaif-act-amaskandam

Esenore Roccuzzi ta bebalf of Defendant Cabank North America. Inc. maphliaptotoph.com. chaccuzziony: d.com

Kape Hopain on behalf of Counter-Claman ICLS Hapity LLC Hareboyattafolyahonatos

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Page 67 of 75

New York Southern Live System

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Ligerese E. Stearts, on behalf of Debrahan Louis Jammy Mayer kears, Wesseye Miller Worscher Albadel & Sittenson P.A. Macsam Tawer, AJTTL 27001 Macsam Tawer, AJTL 27001 Macsam, FL 231120 Macsam, FL 231120 Jettrey Stavia

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SCHEDULE A

Internal Revenue Service
District Director
290 Broadway
New York, New York 10008

Internal Revenue Service Centralized Insolvency Operation Post Office Box 7346 Philadelphia, PA 19101-7346

U.S. Department of Justice, Tax Division Box 55 Ben Franklin Station Washington, DC 20044

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Martin M. Surabian
Alice V. Surabian in trust for Karan T. Surabian
Gregory Surabian
Erik M. Surabian
Stephanie La-Flash Surabian
Kristen E. Surabian
Richard Surabian
Steven Surabian
Steven Surabian
Stephanie La-Flash Surabian
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and
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John H. Petito 3639 River Road Lumberville, PA 18933

Bernard W. Braverman 420 East 54th Street #25B New York, NY 10022 (Courtesy) Email: <u>berniebraverman@gmail.com</u>

Richard C. Brockway 705 Harbour Drive Vero Beach, FL 32963 EXh1B1T

File an answer to a motion:

55-1759-brl Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities, LLC, et a

U.S. Bankruptcy Court

Southern District of New York

Notice of Electronic Filing

The following transaction was received from Josephine Wang entered on 8/15/2012 at 5:28 PM and filed on 8/15/2012 Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities, LLC. et a

Case Name:

Case Number: 08-01789-bri Document Number: 4983

DOERGE 1 ext:

Response to Motion Memorandum of Law of the Securities Investor Protection Corporation in Support of Trustee's Motion for an Order Approving Second Allocation of Response to Motion Memorandum of Law of the Securities Investor Protection Corporation and Anthorizing Second Interim Distribution to Customers (related document(s)[4930]) filed by Josephine Wang on behalf of Property to the Fund of Customer Property and Anthorizing Second Interim Distribution to Customers (related document(s)[4930]) filed by Josephine Wang on behalf of Securities Investor Protection Corporation. with hearing to be held on 8/22/2012 (check with court for location) Objections due by 8/8/2012, Reply due by 8/15/2012, (Attachments: # (1) Certificate of Service) (Wang, Josephine)

The following document(s) are associated with this transaction:

Document description: Main Document Original filename: Memo of Law - Second Allocation.pdf Electronic document Stamp: [STAMP NYSBStamp_ID=842906028 [Date=8/15/2012] [FileNumber=11737455-0] [319dd05896ab25e986eb33f7c24112547254400f42d11215b903e4e1780e7462e7e4 94ce813d202a276f8330a63b3a325f0d49c519c7eb22266e2888af0fb79b]] Document description: Certificate of Service Original filename:Second Allociation Memo - COS.pdf Electronic document Stamp: [STAMP NYSBStamp_ID=842906028 [Date=8/15/2012] [FileNumber=11737455-1] [64f2an002e01315f4adf528c06cf8515954d65992ebaed8fi8e06a3249f334f7a29f 35962nd496n0076997d2cfdd7e6e94cdae62d710a68eeb630df70c8929cb]]

08-01789-brl Notice will be electronically mailed to:

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Robert Alan Abrams on behalf of Defendant Jeanne T. Spring Trust rabrams@katskykonns.com

Nathan D. Adler on behalf of Defendant 20:20 Medici AG nda@nqgrg.com

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Elizabeth Austin on behalf of Defendant Retirement Program for Employees of the Town of Fairfield ea@pullcom.com, jgrossarth@pullcom.com

Robert H. Avaunt on behalf of Unknown Bonnie Mattozzi ravaunt@gmail.com

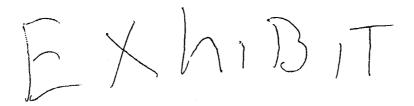
Ernest E. Badway on behalf of Creditor Iris Schaum ebadway@foxrothschild.com

Susan F. Balaschak on behalf of Creditor David and Irma Gross

Steven Jaffe 1989 Trust U/D/T DTD 8/24/89 As Amended Steven P. Heller Trust Robert Salisman Trustee Steven Surabian, Richard Surabian, Martin M. Surabian Beryl Stevens Fred Stevens on behalf of Defendant Ionathan Greenberg
Fox Rothschild LLP
H.) Park Avenue Victor Place New York, NY 11117 Maxine S. Steman Bettid Greisinger Stiffungsrat Plus International Investments Ltd Alexandra Story Strand International Investments Ltd. Maritia D. Strizich Gerald Stuhr Susan Sullivan Sun Family Trust Sunyei Ltd-Jacques Lamac Sunyei Ltd. Martin M. Surabian Richard Surabian Steven Surabian Susan Miranda Selwyn Susan Sansone Pension Plan Susan Schemen Fradin Trustee Rev Agree TST DTD 5/23/2000 Stanley H. Sussman Heinrich Svitak Ayelet Tal & Nachum Tal Tina M. Talarchyk on behalf of Foreign Representative Madoff Securities International Limited Squire, Sanders & Dempsey LLP

1900 Phillips Point West 777 South Flagler Drive West Palm Beach, FL 33401-6198

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- 14. The Trustee submits that this language, if approved by the Court and made part of the order on the Trustee's Motion, should resolve the Aufzien Objection as it relates to their avoidance action.
- 15. The Aufziens, as defendants in pending avoidance actions, should not be permitted to delay distributions based on unsupported damages theories in those actions.
- 16. In sum, if S&P, P&S, Ms. Del Casino and the Aufziens wish to stall \$1 billion in distributions, they should have provided relevant case law or facts that provide some basis for finding 9% is an appropriate interest rate adjustment to customer claims in a SIPA case. They have not and their objections should be overruled.

II. The Surabian Objection

payments under the Second Interim Distribution. This is untrue. The Motion is clear that allowed customers will receive as little as \$1.493 billion and as much as \$2.427 billion, to be distributed pro rata to customers with allowed customer claims. Because this Court has recognized that the Surabians were never customers or creditors of BLMIS,⁴ they will not receive any of these funds and have no standing to object to the Motion.⁵

⁴ See Order, In re Bernard L. Madoff Inv. Sec. LLC, No. 08-01789 (BRL) (Bankr. S.D.N.Y. Apr. 19, 2012) (ECF No. 4779).

The Surabians also objected to the Trustee's Motion for an Order to Schedule Hearing on "Customer" Issue notwithstanding an identical absence of standing. (ECF No. 2052). The Court overruled the objection and approved the Trustee's proposed briefing schedule. (ECF No. 2205). More recently, the Surabians filed the sole objection to the settlement between the Trustee and Trotanoy Investment Company, Ltd., et al. The objection was overruled by the settlement between the Trustee and without basis. (Judge Lifland Tr. 8:1 May 16, 2012). The Surabians have this Court and questioned as confusing and without basis. (Judge Lifland Tr. 8:1 May 16, 2012). The Surabians have also sought to be heard in response to the Scheduling Motion filed by the Trustee on the Time-Based Damages Issue, which the Trustee opposes for the same reasons asserted on each prior occasion. (ECF No. 4920).

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

Debtor.

SECURITIES INVESTOR PROTECTION CORPORATION,	Adv. Pro. No. 08-01789 (BRL)
Plaintiff,	SIPA Liquidation
v.	(Substantively Consolidated)
BERNARD L. MADOFF INVESTMENT SECURITIES LLC,	
Defendant.	-
In re:	
BERNARD L. MADOFF,	

ORDER DENYING MOTION TO REMOVE IRVING H. PICARD AS TRUSTEE FOR THE SUBSTANTIVELY CONSOLIDATED SIPA LIQUIDATION OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC AND BERNARD L. MADOFF

WHEREAS, before the Court is the Motion to Remove Irving H. Picard as Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff (the "Motion") of Martin M. Surabian, Richard Surabian and Steven Surabian (collectively, the "Surabians"), and

WHEREAS, the Court has reviewed the Surabians' Motion, the Surabians' Notice of Motion, the Trustee's Objection to the Motion, the Surabians' Reply to the Trustee's Objection to the Motion, and

WHEREAS, a hearing was held on November 14, 2012 to consider the Motion (the "Hearing"), and

WHEREAS, section 324(a) of the Bankruptcy Code permits a bankruptcy court to remove a trustee "for cause," see 11 U.S.C. § 324(a), and

08-01789-bri Doc 5080 Filed 11714/12 Entered 11/14/12/15:09:08 Main Document Pg 2 of 2

WHEREAS, removal of a trustee is "an extreme remedy" because it can severely impact

the estate and all parties involved, see Morgan v. Goldman (In re Morgan), 375 B.R. 838, 847

(B.A.P. 8th Cir. 2007), and

WHEREAS, a party seeking the removal of a trustee must show specific facts supporting

cause and "[a] conclusory contention unsupported by specific facts does not constitute sufficient

grounds for the removal of a trustee," Alexander v. Jensen-Carter (In re Alexander), 289 B.R.

711, 714 (B.A.P. 8th Cir. 2003), and

WHEREAS, the Surabians have not shown cause for implementing the extreme remedy

of removing the Trustee, as they have failed to set forth specific facts in support thereof, either in

their papers or at the Hearing, and have made only unsupported, conclusory allegations of

prejudice on the part of the Trustee, and

WHEREAS, at most, the Surabians have shown that they disagree with the Trustee's

treatment of their claims, which clearly does not rise to the level of demonstrating cause for

removal of the Trustee, and it is hereby

ORDERED, that the Motion is denied with prejudice;

ORDERED, that this Court shall retain jurisdiction with respect to all matters relating to

the interpretation or implementation of this Order.

Dated: New York, New York

November 14, 2012

/s/ Burton R. Lifland

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK	
SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L MADOFF INVESTMENTS SECURITIES LLC,	Adv. Pro. No. 08-01789 (BRL) SIPA Liquidation (Substantively Consolidated)
Defendant,	NOTICE OF APPEAL JURY DEMAND
In re:	<u>JUAI DEMAND</u>
BERNARD L. MADOFF,	
Debtor.	
NOW COMES Richard Surabian and Steven	Surabian and Martin M. Surabian's Notice of
Appeal of Order Denying Richard Surabian and S	Steven Surabian's Motion to Remove Irving H.

Appeal of Order Denying Richard Surabian and Steven Surabian's Motion to Remove Irving H.

Picard as Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L. Madoff, dated November 14, 2012 Doc. 5080 Burton

R. Lifland United States Brankruptcy Judge.

Steven Surabian Pro se

1230 Rt. 28

S. Yarmouth, MA 02664

(508) 688-4613

Richard Surabian Pro se

P.O. Box 397

W. Hyannisport, MA 02672

(508) 579-9834

Martin M. Surabian Pro se

P.O. Box 397

W. Hyannisport, MA 02672

Date: November 28, 2012



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